

ORDINANCE NO. 1175

AN ORDINANCE AMENDING ORDINANCE #1173 PROVIDING FOR A BUSINESS REGISTRATION UPON TRADES, PROFESSIONS, OCCUPATIONS, BUSINESSES AND SHOPS FOR THE PURPOSES OF PROVIDING FOR THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF TILLAMOOK AND FOR RAISING REVENUE FOR MUNICIPAL PURPOSES; PROVIDING FOR THE METHOD OF ISSUING A BUSINESS REGISTRATION AND COLLECTING FEES AND PROVIDING PENALTIES FOR VIOLATION THEREOF

The City of Tillamook ordains as follows:

Section 1: Purpose of Business Registration:

This ordinance is enacted for the purposes of providing for the health, safety and welfare of the citizens of Tillamook by raising revenue for municipal purposes, to provide revenue to pay for the necessary expense required to issue the business registration and for business identification. The registration fees hereinafter imposed shall be in addition to all general ad valorem taxes now or hereafter levied pursuant to law, and shall be in addition to any and all other license or franchise fees otherwise imposed by the City of Tillamook under existing ordinances.

Section 2: Definitions:

"Person" shall mean all corporations, associations, syndicates, partnerships of every kind, joint ventures, societies and individuals, whether for profit or non-profit, transacting and carrying on business in the City of Tillamook, Oregon.

- (1) "Business" as a noun, shall mean all manufacturers, professions, trades, occupations and shops of all and every kind carried on for profit, and as a verb shall mean any lawful activity or enterprise engaged in for gain, benefit, advantage or livelihood.
- (2) "Hawker" shall mean any person who, for himself or as agent of another, carries for sale and offers for sale, or exposes for sale, any goods, wares, or merchandise, or any article or thing for which a price is asked, in or on the streets, to customers in or on the streets, or who offers or exposes for sale any such commodity from a doorway, recess, alleyway, vacant lot, or other place facing on the street, whether making outcry or not.
- (3) "Retail" shall mean any sale direct to the ultimate consumer or user for consumption or use and not for resale purposes; provided, however, that the above definition shall not be deemed to include persons engaged in the sale of goods, wares and merchandise to dealers by commercial travelers or sales agents in the usual course of business, nor bona fide sales of goods, wares or merchandise by the same for future delivery in interstate commerce, or to the sale of staple products by the grower thereof or his employee.
- (4) "Peddler", shall apply to any person who, for himself or as agent for another, goes from place to place, or from house to house within the City of Tillamook, carrying for sale and offering or exposing for sale at retail any

goods, wares, or merchandise, or any article or thing for which a price is asked.

- (5) "Peddle" shall apply to any sale, or offering for sale, or exposing for sale of any goods, wares, or merchandise, or any article or thing for which a price is asked by a peddler in pursuance of his occupation as a peddler, but shall not be construed to include any wholesaler selling directly to a licensed business.
- (6) "Auctions" and "Auctioneers." Every person who shall by public outcry offer for sale, either as principal or agent, to the highest bidder on the spot, any article of merchandise or property, shall be deemed an auctioneer, and every such sale shall be deemed an auction; provided, however, that nothing in this section shall apply to judicial sales, nor to sales by executors, administrators, or trustees under court order.
- (7) "Transient Merchant" means a person who temporarily occupies a fixed location, sells and delivers from stock on hand, and does business in much the same manner as a permanent business.
- (8) "Non Profit" means for purposes of this ordinance the person which is (1) one, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals and (2) two, for which no part of the net earnings inures to the benefit of a private shareholder or individual, and (3) by which no substantial part of the person's activities is for carrying on propaganda or otherwise attempting to influence legislation and which does not participate in or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office and possessing a certificate from the Internal Revenue Service to that effect.
- (9) "Umbrella registration" shall mean a single business registration for a number of businesses or activities on special occasions. Examples include, but are not limited to, the following:
 - 10.1 Insurance, Real Estate, or other agency-type where brokers supervise independent agents;
 - 10.2 The Chamber of Commerce's June Dairy Parade;
 - 10.3 Tillamook Downtown Association's Tillamook Farmer's Market.
- (10) "Solicitor" means every person or individual who goes from house to house or from place to place within the City of Tillamook selling, offering to sell or taking orders for any products, wares, merchandise or any article or service whether payment is made prior to receiving purchased goods/services or delivery is made upon payment. The term "solicitor" shall not include any commercial traveler receiving orders for goods at wholesale from merchants nor shall said term include any person seeking customers for farm fresh products.
- (11) "Fiscal Year" shall mean July 1 to June 30.

Section 3: Commencement:

On or after July 1, 2002, any person who operates a business or conducts business within the jurisdiction of the City of Tillamook, Oregon, shall first obtain a business registration

registering that business. The applicant shall apply on a form approved by the City and shall pay a fee for the registration in advance.

Section 4: Coverage and Rates:

This ordinance shall apply to manufacturers, trades, professions, occupations, businesses and shops of every kind, unless otherwise exempted. All business registration fees shall be established by resolution of the Tillamook City Council.

Section 5: Peddlers, Solicitors, Hawkers and Occult Arts:

Peddlers, Solicitors, Hawkers and Occult Artists shall, prior to issuance of the registration required by Section 3, furnish a good faith bond to the City in the amount of \$1,000.00. Each such person, firm or salesman shall make written application to the City Recorder at least 10 days prior to the date the registration is to be effective and supply to the City Recorder the name of the company or companies to be represented and furnish the City Recorder with at least three names as personal references. All Peddlers, Solicitors, Hawkers and Occult Artists shall provide the City with their current, physical residence or principal place of business address and peddlers, solicitors and hawkers shall promptly within 30 days notify the City of any change of address. Post office box addresses shall not be accepted to meet this requirement. In addition, peddlers, solicitors, hawkers and Occult Artists shall provide a mailing address, if different from the physical address provided. A copy of the business registration so issued shall be carried at all times by each peddler, solicitor and hawker when conducting business in the city and shall be exhibited when requested to do so by any person subjected to soliciting, peddling and hawking. The business registration, with photo identification, will be presented or be on display in each instance when selling takes place.

Section 6: Non Resident Proprietors:

Any agent or agents of non-resident proprietors engaged in any business in the City of Tillamook shall be personally liable for the business registration fee required and shall be subject to the penalties hereof for the failure to pay that fee to the same extent as if they were themselves the proprietors of the business. The act of advertising within the city, of and by itself, shall not require a business registration under this ordinance.

Section 7: Transfer and Assignment of Registration:

No transfer or assignment of any business registration issued here shall be valid or permitted, except as follows:

A business registration may be transferred or assigned for only the remainder of the registration period when the successive business continues the same use and level of use of the property, and when the number of employees remains the same or less, and when City is notified and paid a transfer or assignment fee, if any.

Section 8: Business Registration Noncontractual:

The registration application is not a contract between City and registrant or any other person. City may unilaterally at any time raise registration fees. However, the increased

fee shall apply to the next fiscal year's registration fee and/or to registrations issued subsequent to the effective date of any new fee.

Section 9: Exempt Businesses:

The following are exempt from the provisions of this ordinance:

- a) Government agencies.
- b) Non-profit organizations which are federally tax exempt.
- c) Home based businesses operated solely by the owner with no employees (i.e. babysitting/childcare where the individual either goes to the person's home or does babysitting in their home, music teachers, house cleaning, cosmetic sales, yard care, odd jobs, mending, etc. if there average weekly hours for any given month do not exceed 10 hours) Daycare facilities as defined by the zoning ordinance do not qualify for this exemption.
- d) individuals below the age of 18 who do not operate a commercial business establishment or have other employees.
- e) Garage sales permitted under City Ordinance No. 890.
- f) Non resident businesses offering merchandise by catalog or by internet for future delivery to the customer.

**Section 10: Payment of Business Registration Fees - non refundable;
Temporary Registration**

It shall be unlawful for any persons to carry on any business, trade, occupation, profession, or calling, or transact any business as described in this ordinance, without first paying in advance, the registration fee as set by resolution. For the purpose of fairness the city shall allow registration fees to be prorated for new applicants not applying on July 1. Fees shall be calculated for the remainder of the fiscal year by quarters. A business may register under this ordinance for up to three (3) months and the fee shall be one third of the yearly fee.

Section 11: Application:

Business registration is effective from July 1 to June 30 of each year. On or before the first day of July of each and every business registration year after the passage of this Ordinance, every person/business as defined in the Ordinance, engaged in a business, in the City of Tillamook, Oregon, shall make application to the City upon a form furnished by the City, for a business registration to carry on his/her business for the year in question.

The applications shall be numbered consecutively; they shall have the year for which application for business registration is applied, printed or stamped thereon, and shall contain the following information:

- Amount of business registration fee tendered with application.
- Signature of applicant or agent making application.
- Date of application.
- Type of Business.

and any other information the City Manager or City Recorder or common council deems said application should contain. The same application standard shall apply for those making application during the business registration year. The City Manager, City Recorder or their designee shall be empowered to issue a business registration upon receipt of proper application and appropriate fee paid. If a question arises between the applicant for a business registration and the City, as to fee or otherwise, the same may be referred to the common council for its determination. This determination may be made by the common council at the next regularly scheduled council meeting. The determination of the council shall be final. Each business registration issued under the provisions hereof shall at all times be displayed in a conspicuous place in the business.

Section 12: Misrepresentation by Applicant:

It shall be a violation of this Ordinance for any person to willfully make any false or misleading statement in his/her application for the purpose of determining the amount of any business

registration fee to be paid, or to fail or refuse to comply with any of the provisions of this ordinance. The penalty for violation of this section shall be \$20 per occurrence.

The conviction of any person for violation of any of the provisions of this ordinance shall not relieve said person from paying any business registration fee or penalty for which said person shall be liable, nor shall the payment of any business registration fee be a bar to or prevent prosecution in the City Municipal Court of any complaint for the violation of any of the provisions of this ordinance.

Section 13: Conflicting Ordinances:

All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

Section 14: Use of Public Right of Ways and Parks by Vendors:

No peddler, solicitor or hawker registered under this ordinance shall have any exclusive right to any location in the public right of ways and parks, nor shall he/she be permitted to operate in any congested area where the operation might impede or inconvenience the public.

Section 15: Regulation of Hours:

No peddler, solicitor or hawker registered under this ordinance shall solicit before the hour of 9:00 a.m. or after the hour of 8:00 p.m.

Section 16. Saving Clause:

If any part, or all, of any phrase, sentence, paragraph or section of the ordinance shall be declared by a court of competent jurisdiction to be void or voidable, the remainder of the ordinance shall continue in full force and effect.

Section 17: Violation/Delinquency:

Any person violating any of the provisions of this ordinance shall be deemed to have committed a civil infraction and, upon oral admission, proof thereof by a trial or stipulation signed by that person before the Municipal Judge in the Municipal Court of

the City of Tillamook, shall pay to the City a sum not to exceed \$50.00 plus the registration fee. Each day that any person conducts any business mentioned herein in violation of the provisions of this ordinance shall be deemed a separate infraction and shall be required to pay a separate sum accordingly. Delinquency. In the event any person hereby required to pay a registration fee shall fail or neglect to pay the fee within 60 days of the due date, the fee shall be considered delinquent. In addition, a penalty of 50% of the scheduled fee will be assessed.

Section 18: Concurrent Remedies:

In addition to the penalties heretofore provided, and as separate and distinct remedies, the City of Tillamook may sue in any court of competent jurisdiction to obtain judgment and to enforce payment of any business registration fee due pursuant to the provisions of this ordinance and to seek injunctive relief against any person violating this ordinance. Attorney fees, costs, disbursements and/or prevailing party fees shall be awarded to the prevailing party, unless otherwise agreed or waived by City.

Section 19: Business Registration Fee Reduction or Waiver; Fee; Appeal:

A person may apply for a reduction, or waiver, of the business registration fee by submitting a letter justifying the request and a \$10* non-refundable fee to the City Manager. The City Council or City Manager, may grant in writing, a reduction or waiver of the business registration fee for good cause shown, hardship or equity. City Manager may refer an application directly to the City Council. Applicant may appeal, without additional fee, City Manager's decision to City Council.

PASSED 1st reading this 3rd day of June, 2002.

PASSED 2nd reading this 17th day of June, 2002.

PASSED by the Tillamook City Council this 17th day of June, 2002.



Mayor

ATTEST:



City Recorder